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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

COCP-480-1993 (O&M)
Date of decision: 20.11.2019

KIRAN BALA AND ANOTHER

.. PETITIONERS

VERSUS

SHRI M.P.GUPTA AND ANOTHER

.. RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Abhay Nanda, Advocate
for the petitioners.

Mr. Gagandeep Singh Wasu, Addl. AG, Haryana.

AVNEESH JHINGAN, J. (Oral)

The petition filed under Sections 10 & 12 of the Contempt of Courts Act, 1971 pleading that order dated 21.05.1993 passed by the Chief Settlement Commissioner, Haryana is in violation of the judgment of this Court dated 06.02.1986 passed in *CWP No. 5043 of 1976* titled as *Amarnath through LRs Versus The Financial Commissioner and Secretary to Government Haryana and others.*

The brief facts necessary for adjudication of the present petition are that on 08.02.1967, the petitioners filed an application under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, for allotment of two plots bearing No. 19 and 20 measuring 415 & 478 square yards, respectively. The plots were situated in Mohalla Saidon, Shahabad Markanda. The request was accepted and the plots were transferred in the name of the petitioner by Naib Tehsildar-cum-

Managing Officer. The said transfer was set aside vide order dated 03.08.1971 by the Settlement Officer (Sales)-cum-Assistant Sales Commissioner, exercising power of Settlement Commissioner taking *suo motu* cognizance on the ground that the conditions for transfer were not fulfilled as the plots were not constructed. Aggrieved, the petitioners filed CWP No. 5043 of 1976. In the writ petition, it was noted that the plots were transferred to the petitioners in the light of the Government instructions which entitled an unauthorised occupant of a built up property to purchase the same. The writ petition was allowed and the *suo motu* action of Settlement Officer (Sales) was set aside for want of jurisdiction. It was held that the Settlement Officer (Sales) was not having *suo motu* powers. The relevant portion of the judgment is reproduced below:-

“I am thus satisfied that the Settlement Commissioner had no jurisdiction to set aside the order of the Naib Tehsildar (Sales) suo motu. The affirmance of this order by the superior authorities vide orders Annexure P/1 and P/2 cannot be taken to bestow any jurisdiction on this officer, that is, the Settlement Commissioner. I, therefore, set aside order Annexure P/3. As a natural consequence of this, the other two orders annexures P/1 and P/2 upholding order annexure P/3 too are set aside No. costs.”

After the decision of the writ petition, the Chief Settlement Commissioner, Haryana on receiving reference from the Tehsildar (Kaithal) to the effect that the plots transferred to the petitioners were vacant plots, cancelled the allotment vide order dated 21.05.1993.

Aggrieved of the said order, the present contempt petition was filed pleading that the order has been passed in wilful disobedience of the judgment dated 06.02.1986.

Learned counsel for the petitioners argues that once the cancellation of transfer was set aside by this Court, the order dated 21.05.1993 could not have been passed.

Learned State counsel defends the order and fortifies his defence on the ground that the order passed by the Settlement Officer (Sales) was set aside for want of jurisdiction. He further submits that the petitioners have failed upto the level of the Financial Commissioner in challenge made to the said order.

The contention raised by learned counsel for the petitioners is not well founded. There is no wilful disobedience of the judgment of this Court. The issue decided by this Court was with regard to jurisdiction of Settlement Officer (Sales) invoking *suo motu* power of setting aside the order. There was no prohibition from proceeding in accordance with law. Moreover, transfer was made to the petitioners on the ground that plots in question were built-up plots whereas subsequently it was found that these were vacant plots.

There is another aspect of the matter that the petitioners challenged the subsequent orders in which they failed.

Moreover, it is not in every case of alleged disobedience that contempt petition is to be initiated. In ***Sahdeo v. State of U.P.*, (2010) 3 SCC 705 : (2010) 2 SCC (Cri) 451**, Supreme Court held as under:-

15. The proceedings of contempt are quasi-criminal in nature. In a case where the order passed by the court is not complied with by mistake, inadvertence or by misunderstanding of the meaning and purport of the order, unless it is intentional, no charge of contempt can be brought home. There may possibly be a case where *disobedience is accidental*. If that is so, there would be no contempt. [Vide *B.K. Kar v. Chief Justice and Justices of the Orissa High Court* [AIR 1961 SC 1367 : (1961) 2 Cri LJ 438] (AIR p. 1370, para 7).]

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17. The Constitution Bench of this Court in *State of Bihar v. Sonabati Kumari* [AIR 1961 SC 221] , held that the provisions of Contempt of Courts Act, 1971 (for short “the 1971 Act”) deal with the wilful defiance of the order passed by the court. Order of punishment be not passed if the court is satisfied that the party was, in fact, under a misapprehension as to the scope of the order or there was an unintentional wrong for the reason that the order was ambiguous and reasonably capable of more than one interpretation or the party never intended to disobey the order but conducted himself in accordance with the interpretation of the order.

The issue addressed does not make a case of wilful disobedience of the judgment of this Court rather it involves a legal issue as to whether the respondents could have passed an order for cancellation of the allotment specially when the earlier order passed was set aside only for want of jurisdiction. The issue was not before the writ Court. The Supreme Court in **Jharieswar Prasad Paul vs Tarak Nath Ganguly 2002 (5) SCC 352** held as under:-

The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. Since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. [The Contempt of Courts Act, 1971](#) has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of courts is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the

disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes leveled against the courts exercising contempt of court jurisdiction "that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute" in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts.

(emphasis supplied)

In **Avishek Raja Vs. Sanjay Gupta; 2017 AIR (SC) 2955** it was held as under:-

“More recent in point of time is the view expressed by this Court in **Noor Saba vs. Anoop Mishra, 2013 (4) S.C.T. 492** wherein the scope of the contempt power in case of a breach of a Court’s order has been dealt with in paragraph 14 of the report in the following manner-

“To hold the respondents or anyone of them liable for contempt this Court has to arrive at a conclusion that the respondents have wilfully disobeyed the order of the Court. The exercise of contempt jurisdiction is summary in nature and an adjudication of the liability of the alleged contemnor for wilful disobedience of the Court is normally made on admitted and undisputed facts. In the present case not only there has been a shift in the stand of the petitioner with regard to the basic facts on which commission of contempt has been alleged even the said new/altered facts do not permit an adjudication in consonance with the established principles of exercise of contempt jurisdiction so as to enable the Court to come to a conclusion that any of the respondents have wilfully disobeyed the order of this Court”

In view of the above, there is no case is made out for interference, the contempt petition is dismissed.

As noted above, the petitioner had already availed the remedies available against the order passed cancelling the allotment.

20th November, 2019
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*